By section 2 of the Enactment "place" includes a room, and a place is deemed to be "used" for a purpose if it is used for that purpose even on one occasion only.

When gaming appliances are found in any place lawfully entered by the police — there is no dispute that this place was lawfully entered by the police who were armed with a proper search warrant — two presumptions arise under section 19 of the Enactment, one against the occupier of that place and the other against the place itself. Since the appellant was not the occupier of the place — in this case a room — no presumption can arise against him, but the presumption provided by that section against the place (room) still stands, and it is that until the contrary be proved the place (room) is a common gaming house.

Mr. Charlesworth, for the appellant, first submitted that since the appellant had sub-let the room in question to another person, that other person was in exclusive possession of that room and the appellant was out of possession, and that no charge of permitting the room to be so used could be brought against the appellant unless it could be proved that he was in occupation of that room. Subsequently, Mr. Charlesworth, during the course of argument, modified that submission and admitted that an owner could be successfully prosecuted if he knew his premises were being used as a common gaming house, and having the opportunity of preventing them from being so used, he did nothing about it. He further submitted on this that the only step such an owner could take would be to determine the tenancy.

That an owner can be prosecuted for permitting his premises to be used as a common gaming house, even if he is not in occupation himself of any part of those premises, is clear from the following passage in *Braddell's* Commentary on the Common Gaming Houses Ordinance, 2nd edition, page 74 :—

> It must next be proved that the accused used or kept the premises as a common gaming house. If the accused has been strictly proved to the 'occupier' and instruments of gaming or any of the other circumstances have been found, as is pointed out above, the accused will be presumed to have used the premises as a common gaming house. **If the accused is the owner, not in occupation....the only presumption that will arise is that the place was a common gaming house.**

Therefore, in this case that presumption arises against the appellant even though he was not in occupation of the room in question.

Hence the question in this case resolves itself into one of fact whether from the evidence the appellant had knowledge that the room was being used as a common gaming house and permitted it to be so used.

The appellant, himself, gave evidence that he had no knowledge that it was so being used. The learned District Judge disbelieved that evidence. In my view the learned District Judge was right. From a plan of the premises, which appears on the record, it is plain that the first floor of this particular house is not large and that the occupants thereof are living very close together. The other person, i.e. the appellant's immediate tenant of the room in question, gave evidence that he is a gambling addict of Chee Fah lotteries.

This other person admitted that he rented that room from the appellant and, as already stated, the appellant admitted having rented that room to that other person. From this evidence and from the lay out of the first floor itself I do not see how the learned District Judge could have come to any other conclusion than that the appellant knew the room was being used as a common gaming house and permitted it to be so used.

Accordingly this appeal is dismissed. The sentence of a fine of $1,500, in default six months rigorous imprisonment, is maintained. If the fine is not paid the imprisonment will commence from to-day because the appellant has been on bail since the day he was convicted.

Appeal Dismissed.

HAMIRON BIN MAT UDIN AND 2 OTHERS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, C.J., Singapore, Pretheroe Ag. C.J., Malayan Union and Spenser-Wilkinson, J.) November 15, 1947]

Evidence Enactment S. 27 — Facts discovered as result of information given by accused.

In this case in a trial for murder evidence was given of statements made by the accused to police officers. It was submitted that such evidence was admissible under S. 27 of the Evidence Enactment.

Held, that Section 27 of the Evidence Enactment must be used with the greatest care and evidence of the fact discovered and of its relevancy must be given before any evidence can be offered as to the information from the accused which resulted in the discovery.

Cases referred to :—

(1) *Sukhan v. The Crown* (1929) 10 I.L.R. Lahore 283.

(2) *Ganu Chandra v. Emperor* (1932) 56 I.L.R. Bom. 172.

(3) *Pulukuri Kotayya v. King Emperor* 74 I.A. 65.

CRIMINAL APPEAL.

M. S. Mahendran for the Appellants.

M. G. Neal (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was given by :—

Murray-Aynsley, C. J. : — The appellants in this case were charged with the murder of a woman named Salmi on 17th February 1946. The evidence of the two principal witnesses was to the effect that several persons, amongst whom were the three accused, set upon this woman, as a gang, one of whom stabbed her, and then dragged her to the river and threw her in. One witness says that he then pulled her out of the river after which the assailants dragged her towards the sea.

The woman's body was found on the 21st February and was seen by the Medical Officer on that day whilst it was still floating in the sea near the shore. The exact cause of death could not be ascertained, but the condition of the body was compatible with death from shock and haemorrhage accelerated by asphyxia.

In the course of the trial the following statements were deposed to by a police Inspector, Raja Abas :—

> "Accused No. 2 took me to the sea and there pointed out a place where the body of the deceased was thrown.....".
>
> "Later I went out by boat to sea. Again he showed me spot where body had been thrown, this is about 1½ miles from the bridge".
>
> "He said it had been dragged there by boat with a rope tied round its neck".

For reasons which will be explained later we are of opinion that none of these statements alleged to have been made by accused No. 2 was admissible in evidence.

The witness Raja Abas went on to say :—

> "On the 21st February the body was found. I was certain it was Salmi's body as I saw a rope round the neck as No. 2 had described.".

It was claimed by the prosecution that it was as a result of the statements made by accused that the body was found; and also that it was because of accused's statement that the Police Inspector was able to identify the body by the rope round the neck. It is to be observed, however, that there is no evidence on the record to suggest that the body was found at the place which was pointed out by the 2nd accused — indeed there was no evidence at all as to where the body was found or by whom. Moreover the body was identified by both the 2nd and 4th prosecution witnesses without reference to the rope round the neck.

In view of the definition of "confession" contained in sub-section (2) of section 17 of the Evidence Enactment there can be no doubt in our view that all the statements of accused No. 2 above referred to come under the ban imposed by section 26 of the same Enactment, and are excluded by section 113 of the Criminal Procedure Code unless they can be brought within the scope of section 27 of the Evidence Enactment. But in our view nothing was deposed to as having been discovered as a result of what the 2nd accused said so that section 27 has no application to the matter before us.

We think it desirable to emphasise that the first step which must be taken before section 27 can be invoked at all must be proof of some fact discovered as a result of the information given by the accused. The following passage from the judgment of the Chief Justice in *Sukhan v. The Crown*[1] indicates this quite clearly :—

> When the prosecutor has after satisfying the Court about its relevancy, deposed to the fact discovered by him, he has laid the foundation for proving the information received by him from the accused.

The evidence in this case and in the case of *Ganu Chandra v. Emperor*[2] have recently been approved by the Privy Council in *Pulukuri Kotayya v. King Emperor*[3].

It is clear, therefore, that in this case evidence has been admitted which should not have been admitted. Moreover this inadmissible evidence was specifically referred to in the summing-up of the learned Judge as evidence of importance. We find it impossible to suppose that the Assessors may not have been influenced in their decision in respect of all the accused by these wrongly admitted statements, and we are therefore of opinion that the convictions cannot stand.

All the convictions are accordingly quashed and the appeal of each of the appellants is allowed.

Appeal Allowed.

SUNG SONG LING v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) December 4, 1947]

Johore Trade and Customs Enactment (No. 80), S. 39 — Preparation of an incorrect Customs Declaration — Whether this is conclusive evidence of intention to use it for an improper purpose.

In this case the facts were shortly as follows:—The accused presented at the Customs Office in Johore Bahru a declaration of goods to be imported to the value of $409.50 together with nine packages of goods. These and the invoices to cover the goods were detained for clearing the next day. The accused also stated that the declaration was not correct as one box had been omitted and that he would hand in another declaration the next day. The next morning the Senior Customs Officer